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February 6, 2018

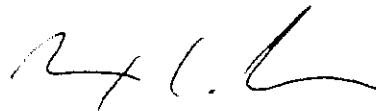
Honorable Mitchell S. Goldberg  
United States District Court Judge  
United States District Court, Eastern District of Pennsylvania  
U.S. Courthouse  
601 Market Street, Room 7614  
Philadelphia, PA 19106-1741

**RE: Robert Wharton v. Donald T. Vaughn, Civil Action No. 01-6049**

Dear Judge Goldberg:

Enclosed please find a copy of respondent's Notice of Concession of Penalty  
Phase Relief, which has been filed with the Court.

Respectfully Submitted,



Max C. Kaufman  
Supervisor, Federal Litigation Unit

Enclosure

cc: Victor Abreu, Esquire  
Claudia VanWyk, Esquire

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>ROBERT WHARTON,</b> Petitioner	:	<b>CIVIL ACTION</b>
v.	:	
<b>DONALD T. VAUGHN,</b> Respondent	:	<b>NO. 01-6049</b>

**NOTICE OF CONCESSION OF PENALTY PHASE RELIEF**

1. Petitioner is a Pennsylvania state prisoner who was convicted of two counts of first-degree murder in 1985 and received two sentences.
2. In 2003, petitioner filed a petition for a writ of habeas corpus in federal court.
3. In 2012, this Court denied the habeas petition. The Court granted a certificate of appealability (COA) on two claims: that counsel was ineffective at the suppression hearing and at trial for not presenting evidence supporting the involuntariness of his confession, and that petitioner's rights under the Confrontation Clause were violated.
4. The Third Circuit Court of Appeals subsequently expanded the COA to include another ineffectiveness claim: that counsel was ineffective for not investigating petitioner's adjustment to prison or presenting evidence of that adjustment at the second penalty hearing.
5. On January 11, 2018, the Third Circuit Court affirmed in part and denied in part this Court's denial of petitioner's habeas petition. The Third Circuit affirmed the

denial of relief on the two guilt-phase claims, vacated the denial of the sentencing claim, and remanded to this Court for an evidentiary hearing on that surviving claim.

6. On December 3, 2018, the United States Supreme Court denied petitioner's petition for a writ of certiorari.

7. On January 4, 2019, petitioner filed in this Court a *pro se* motion for the appointment of new counsel.

8. On January 9, 2019, this Court scheduled a status conference for February 14, 2019.

9. Following review of this case by the Capital Case Review Committee of the Philadelphia District Attorney's Office, communication with the victims' family, and notice to petitioner's counsel, respondent hereby reports to the Court that it concedes relief on petitioner's remaining claim of ineffective assistance at the second penalty hearing, and does not contest the grant of a conditional writ of habeas corpus with respect to petitioner's death sentences.

10. In addition, respondent agrees that, following the grant of a conditional writ as to petitioner's death sentences, it will not seek new death sentences in state court.

11. Because all of petitioner's other claims have been fully and finally litigated, the grant of sentencing relief on petitioner's penalty phase ineffectiveness claim in accordance with respondent's concession would end the litigation of this case in federal court. Thus, the grant of penalty phase relief would render moot petitioner's motion for new counsel, and eliminate the need for the scheduled status conference or other proceedings in this Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Max C. Kaufman', written over a horizontal line.

Max C. Kaufman  
Supervisor, Federal Litigation Unit  
Philadelphia District Attorney's Office  
Three South Penn Square  
Philadelphia, PA 19107  
(215) 686-5747

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT WHARTON,  
Petitioner

:

CIVIL ACTION

v.

:

DONALD T. VAUGHN,  
Respondent

:

NO. 01-6049

CERTIFICATE OF SERVICE

I, MAX C. KAUFMAN, hereby certify that on February 6, 2019, a copy of the foregoing pleading was served by placing same, first-class postage prepaid, in the United States mail addressed to:

Shawn Nolan, Esquire  
Victor Abreu, Esquire  
Claudia VanWyk, Esquire  
Defender Association of Philadelphia  
Federal Court Division  
The Curtis Center, Suite 545 West  
Independence Square West  
Philadelphia, PA 19106  
(215) 928-0520



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